No. 182.

By. of Stewart Wenchell for Def'd

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BRIEF OF PLAINTIFF IN ERROR IN OPPOSITION TO THE MOTION TO DISMISS OF DEFENDANT IN ERROR.

Filed Sept. 29, 1900.

SUPREME COURT of the UNITED STATES.

OCTOBER TERM, 1900.

No. 182.

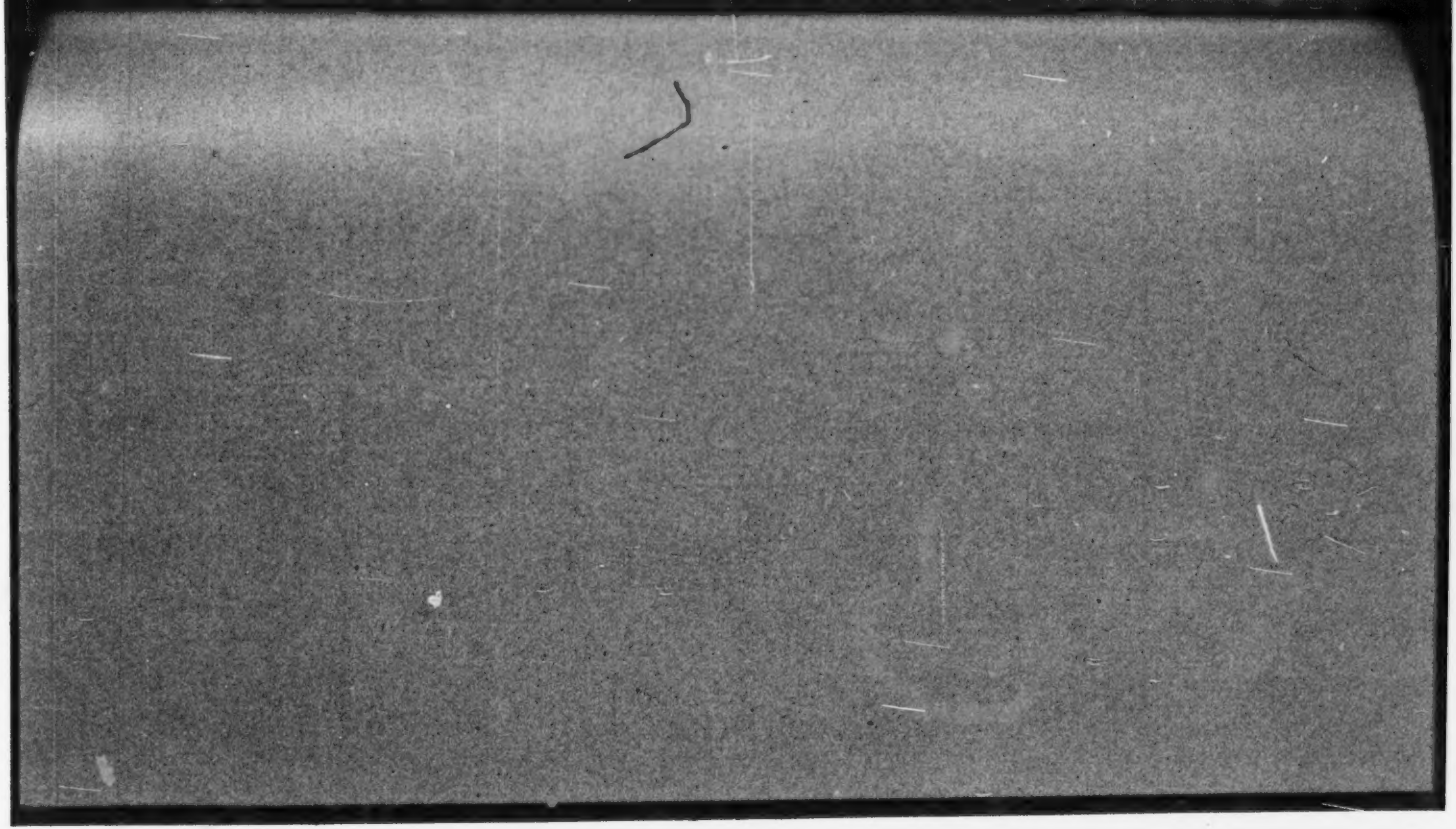
CHARLES A. CHAPIN, PLAINTIFF IN ERROR,

vs.

RUTH I. FYE, BY HER NEXT FRIEND,
HENRY W. FYE.

IN ERROR TO THE CIRCUIT COURT OF KALAMAZOO COUNTY, STATE OF MICHIGAN.

(17,605.)



SUPREME COURT of the UNITED STATES.

CHARLES A. CHAPIN,
Plaintiff in Error,
vs.
RUTH I. FYE, by her next friend, HENRY W. FYE.

October Term, 1900.
No. 182.

Brief in Behalf of the Plaintiff in Error.

STATEMENT OF THE CASE.

This action is brought under Section 2119 of Howell's Statutes of Michigan, which is as follows:

"If any dog shall have killed or assisted in killing, wounding or worrying any sheep, lamb, swine, cattle, or other domestic animal, or that shall assault or bite, or otherwise injure any person while traveling the highway or out of the enclosure of the owner or keeper of such dog, such owner or keeper shall be liable to the owner of such property or person injured in double the amount of damages sustained, to be recovered in an action of trespass, or on the case; and it shall not be necessary, in order to sustain an action, to prove that the owner or keeper knew that such dog was accustomed to do such damage or mischief; and upon the trial of

any cause mentioned in this section, the plaintiff and defendant may be examined under oath, touching the matter at issue, and evidence may be given as in other cases; and if it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, the court shall render judgment against such defendant for double the amount of damages proved, and costs of suit; but in no case shall the plaintiff recover more than five dollars costs."

The declaration alleges that defendant in error, who was a child four years of age, on the 16th day of December, 1897, was bitten by a dog, of which the plaintiff was the owner and keeper, while the dog was out of the enclosure of the plaintiff in error, by which the defendant in error was seriously and permanently injured and disfigured.

The first count in the declaration did not allege that the plaintiff had any knowledge of the previous vicious habits or conduct of the dog.

The second knowledge alleged such knowledge.

R pp. 3, 4, 5.

The case was tried before a jury. The Circuit Judge charged the jury that if the plaintiff in error was the owner and keeper of the dog, and the assault was committed without the enclosure of the plaintiff in error, the verdict should be for the plaintiff in the suit; and, on the subject of damages, charged the jury that the plaintiff in the suit was entitled to recover all damages which she had suffered up to the time of the trial, and for all damages which it is reasonably probable that she will sustain in the future, and was careful to instruct the jury that such damages included and embraced compensation for all injuries past and prospective, including indemnity for loss of physical power or mental vigor, or injury to the nervous system, or effect

of the injury complained of, including personal inconvenience, sickness, bodily and mental suffering, impairment of her capacity to make her way in the world and earn money, and the disfigurement or permanent annoyance which she was liable to be caused by the deformity resulting from the injury.

The jury were also instructed to take into account her mental suffering and fright as elements of the injury for which damages by way of compensation should be allowed.

The jury were also instructed that as these last mentioned elements of damage are, in their very nature, not susceptible of any precise or exact compensation, the determination of the amount is committed to the judgment and good sense of the jury.

The jury were instructed that they were not to assess damages against the defendant by way of punishment, but the jury were at liberty to award such an amount as would fully compensate the plaintiff for all damages she had already sustained, or would sustain, keeping in mind this fact, that compensation to plaintiff was the thing in view.

The Circuit Judge then further instructed the jury that if they found from the evidence that the dog is one of vicious and destructive propensities, and that previous to the injury to the plaintiff in the suit, he had bitten other children, and that this vicious and destructive habit, and the fact that he had bitten other children was known to the defendant in the suit, the jury were at liberty to consider these facts in fixing their award of damages, not as a punishment to the defendant, but in aggravation of the damages that the plaintiff in the suit was entitled to recover. (R. pp. 200, 201.)

The jury rendered a verdict on June 3rd, 1898, in favor of the plaintiff in the suit, for the sum of $10,000 as her damages,

R. p. 212.

On June 11th, the attorneys for the plaintiff in error filed a protest in the case against the doubling of the damages in the suit by the circuit judge. (R. p. 213.)

On the same day the circuit judge overruled the objection of the attorneys of the plaintiff in error to the doubling of the damages in the suit, and held that, under the statute, it was left to the discretion of the judge of the court to determine whether, in view of the evedence, the damages awarded by the jury in their verdict should be doubled. (R. p. 215.)

The circuit judge further held that "if in this case it had appeared that the defendant was the owner and keeper of a dog which had never shown any vicious propensities, that this was its first outbreak, while the court would be powerless to help the defendant so far as the damages assessed are concerned, the statute making him liable for those; still, if he was shown to have had no knowledge of the vicious propensities of the dog, yet it would be unjust to him to double the damages. The testimony in this case shows that this dog had been accustomed to bite mankind; and that being the case, it seems to me it presents a different case from what it would under a different state of affairs, and it became the duty of the defendant to see that the dog was shut up, without a ly peradventure, so that he would (not) get out. The jury (testimony) in question shows that the dog did get out, and whether it was with or without the fault of the defendant, after he had notice of the vicious propensities of the dog as shown in this case, he must be held to a very strict account for what the dog does." (R. p. 218.)

The Circuit Judge thereupon, on the 11th of June, 1898, entered a judgment for $20,000, doubling the amount of damages found by the verdict of the jury. (R. p. 219.)

On the 23rd of June, 1898, the attorney for the

plaintiff in error moved the Circuit Court to set aside the verdict and the judgment, and to grant a new trial, on the ground among others, that the verdict was excessive. (R. p. 221, 222.)

The case was appealed to the Supreme Court of the State upon assignments of error filed in court, among which assignments of error the invalidity of the statute was assigned by the 94th, 95th, 96th, 97th and 98th assignments, which are as follows: (R. pp. 240, 241.)

"94th. There being, also, inconsistency with the first constitution of the State of Michigan, Article 1, Sections 9, 10, 21, and there being inconsistency with the provisions of the ordinance of 1887, Article 2, said ordinance being enacted by the Congress of the United States, entitled, 'An ordinance for the government of the territory of the United States northwest of the Ohio River,' especially as to the words of said article in relation to the right of a trial by jury and judicial proceedings according to the course of common law. There being, also, inconsistency with two provisions in the Constitution of the the United States, especially the words of amendment 5, as to due process of law, and of amendment 7, assuring right of trial by jury."

"95 There is also error in this, the statute aforesaid mentioned in the declaration aforesaid, and on which the judgment aforesaid depends, is inconsistent with article 5 of the amendment to the Constitution of the United States, requiring that no person shall be deprived of life, liberty or property without due process of law."

"96th. There is also error in this that the statute aforesaid mentioned in the declaration aforesaid, and on which the judgment aforesaid depends, is inconsistent with article 7 of the amendments to the Constitution of the United States, requiring that the right of trial by jury shall be preserved."

"97th. There is also error in this, that the words of Section 2119 of Howell's Annotated Statutes of Michigan, being Section 2, Act 161, of the Laws of Michigan for 1850, on which the judgment aforesaid depends, said words being, 'If it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provision of this act, the court shall render judgment against such defendant for double the amount of damages proved,' purport to authorize the Circuit Judge to act as a chancellor, regardless of the verdict of a jury, and in a manner inconsistent with constitutional provisions requiring the distinction of equity proceedings from common law proceedings, and with the law of the land."

"98th. There is also error in this, that the statutory words copied in the last forgoing assignment of error, on which the judgment aforesaid depends, purports to authorize the Circuit Judge to act as a juror in a manner inconsistent with the law of the land. There is also error in this, to-wit; that the record and proceedings, it appears that the circuit court gave judgment in favor of the plaintiff and against the defendant, whereas by the law of the land, the said judgment should have been in favor of the defendant and against the plaintiff, and the said defendant therefore now alleges and asserts, and before the Supreme Court of the State of Michigan, will pray that the judgment and proceedings aforesaid, for the errors aforesaid appearing as aforesaid, may be reserved, annulled, and altogether held for naught, and that the defendant may be restored to all things which he has lost by means thereof."

The Supreme Court of the State of Michigan sustained the validity of the statute.

Upon this point the opinion of the Supreme Court is as follows: (R. pp. 259, 260.

"It is contended that this act is unconstitutional, in that it confers upon the circuit judge power to act as chancellor in a suit at law so far as he exercises the authority to double the damages. The construction which defendant's counsel gives to the statute is that, before the court shall double the damages, it must appear satisfactorily to the court that the defendant is justly liable for the damages complained of, and that the judge is, by the terms of the statute, to act independently of the jury in determining the amount of damages proved. The statute has been enforced in a number of cases. Swift v. Applebone, 23 Mich., 252; Elliot v. Herz, 29 Mich., 202; Monroe v. Rose, 38 Mich., 348; Trompen v. Verhage, 54 Mich., 305; 20 N. W., 53; Burnham v. Strother, 66 Mich., 519; 33 N. W., 410. The questions now suggested have not heretofore been raised by either the court or counsel. This fact does not, of course, conclude the defendant. The presumption is strong, however, that the statute, which has been operated under for nearly half a century, has on various occasions, when it has been enforced, been scrutinized by both court and counsel, and found not open to attack. The statute is inartificially drawn, but we think it open to the construction which is not inconsistent with the proper exercise of the distinct functions which the law casts upon the judge and jury respecttivly. The liability is declared to be in double the damages sustained. The presumption is that those damages are to be ascertained as in ordinary cases,—if the trial be before a jury, by the jury; and by the court when the jury is dispensed with. While the latter portion of the section is more appropriate to a trial before the court without a jury, we think the word "court" may be construed to mean the court acting through all of its instrumentalities, which includes the jury, and, so construed, the act is operative. It is competent for the legislature to provide for doubling damages in this class of cases. Trompen v. Ver-

hage, 54 Mich., 304, 20 N. W., 53; Cummings v. Riley, 52 N. H., 368; Chickering v. Lord (N. H.,) 32 Atl., 773; Fitzgerald v. Dobson, 78 Me., 559, 7 Alt., 704; Barrett v. Railroad Co., 3 Allen, 101."

In respect to the judgment which was rendered by the Circuit Judge, the Supreme Court sustained the Circuit Judge in the doubling of the verdict in the rendition of the judgment. But a motion for new trial having been made by the attorney of the plaintiff in error on the ground, among others, that the verdict of the jury was excessive, the Supreme Court considered the action of the Circuit Judge upon this motion, and held that the verdict of the jury was excessive, and on that ground directed that a new trial be granted, unless the plaintiff in the suit, within thirty days, should elect to remit from the judgment, $10.000.

The following is the opinion of the Supreme Court, upon this point. (R. pp. 261, 262:)

"A motion for a new trial was made before the Circuit Judge. The same points of law were raised which we have discussed in this opinion. In addition it was contended that the verdict was excessive. The circuit judge held that, while the verdict was a large one, it was not so large as to authorize the court in finding that it was excessive. A most careful reading of the record leads us to a different conclusion. The evidence tending to show that epilepsy will result from the injury is not, to our mind, clear and convicting, although legally admissible. It would appear that the jury resolved every doubt against the defendant, and it is by no means clear that they did not include in their verdict an award by way of punishment. A new trial will be granted, unless the plaintiff shall, within 30 days, elect to remit from the judgment, $10.000. Defendant will recover costs of this court."

The plaintiff in the suit, by her attorney elected to remit from the judgment the sum of $10.000 (R. p. 263.)

and thereupon judgment was rendered in the case in the Supreme Court of the state for the sum of $10.000.

The judgment as rendered in the Supreme Court is as follows: (R. pp. 263, 264.)

"RUTH I. FYE, Plaintiff,

vs.

CHAS. A. CHAPIN, Defendant and Appellant.

The record and proceedings in this cause having been removed to this court by writ of error issued to the circuit court for the county of Kalamazoo, and the same and the matters in error assigned having been seen and inspected, and duly considered by the court, and it appearing to this court that the said record and proceedings and in the giving of the judgment in said circuit court there is error, as stated in the opinion filed herein November 14, 1899.

And the plaintiff having duly filed her election with the clerk of this court to remit from said judgment ten thousand dollars, in accordance with the opinion of this court; now, therfore, it is ordered and adjudged that the judgment of the court circuit for the county of Kalamazoois modified accordingly, and as so modified said judgment is hereby in all things affirmed, and that the plaintiff do recover of the defendant ten thousand dollars, with interest thereon from June 3, 1897, at 6 per cent per annum, as provided by law, and that the said plaintiff have execution therefor, and that the defendant do recover of the plaintiff his costs in this court to be taxed, and that the defendant have execution therefor,"

II.

The question presented is this: In the proceedings by which judgment was rendered against the plaintiff in error by the *State Court*, is the plaintiff deprived of property without due process of law?

1st, Due process of law, within the meaning of the Fourteenth Amendment of the Constitution, has reference to that which is due process of law by the law of the State in which the process is applied.

Hurtado v. California, 110 U. S., 516, at 535, 536.
Missouri v. Lewis, 101 U. S., 22, at 31.

2nd, Due process of law in the State of Michigan includes the right of trial by jury in all civil cases.

Constitution of Michigan, Art. VII, Sec. 27.
" " Art. IV, Sec. 46.
McRae v. R R. Co., 93 Mich., 399.
Ball v. Ridge Copper Co,, 118 Mich,, 7, at 15, 16, 17.
Swart v. Kimball, 43 Mich., 443, at 448.
Odell v. Reynolds, 40 Mich., 21.
Tabor v Cook, 15 Mich., 322, 324, 325.
Parsons v. Russell, 11 Mich., 113, at 121, 122.

The right of trial by jury, by the law of Michigan, is the right to have the jury determine by their verdict every fact involved in the case which is necessary to authorize the judgment which is reudered in the case, and the defendant must have opportunity to be heard in his defense before the jury,

3d, The objection of the plaintiff in error to the proceedings and judgment rendered against him is, that by the action of the Circuit Judge the amount of the verdict of the jury was arbitrarily doubled in fixing the amount of the judgment, and this action of the Circuit Judge in doubling the amount of the verdict in determining the amount of the judgment was sustained by the action of the Supreme Court.

By the terms of the statute under which the action is brought, the plaintiff in error, as owner of the dog, is made liable to the defendant in error in double the amount of the damages sustained, to be recovered in an action of trespass, or on the case. This part of the statute prescribes the liability, and the extent of the liability.

The provision for rendering judgmeut is as follows:

"And if it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, the court shall render judgment against such defendant for double the amount of damages proved."

The proceedings of the trial were as follows:

The jury were impanneled to try the case, and the trial proceeded in the usual form upon introduction of evidence before the jury, and at its close the jury were charged by the Circuit Judge to determine from the evidence whether the defendant in the suit was, as owner of the dog, liable for the plaintiff's injuries.

If they found the defendant liable, they were to determine what damages she had suffered, and upon this point they were instructed to include everything that could be accounted a damage or injury, and full compensation was to be awarded her therefor.

Then, in addition to that, in case the jury should find the defendant in the suit had knowledge of the vicious and dangerous habits of the dog they were instructed that they might allow the plaintiff an additional sum as an aggravation of damages. (R. p. 200, 201.)

Acting upon this charge, the jury returned a verdict of $10,000 damages. The Circuit Judge thereupon, acting under the provision of the statute for rendering a judgment, held that it was for him as "the court," to determine whether to render a judgment upon the verdict for the amount of the verdict, or to render a judgment for twice the amount of the verdict. (R. p. 215.)

In this view of the statute it was necessary that the Circuit Judge himself determine these facts, viz: That it appear to his satisfaction by the evidence that the defendant in the suit was justly liable for the dam-

ages complained of, and the amount of the damages proved, and that such amount was the amount of the verdict rendered by the jury.

It is only upon his finding such facts that he is authorized to render a judgment for double the amount of the verdict of the jury.

The Circuit Judge by his action did so find, and rendered the judgment accordingly for $20,000 damages.

If he had not so found he would have rendered a judgment upon the verdict for the amount of the verdict.

The result of the proceedings was this: The judgment was made up of $10,000 as the result of the trial by the jury, and of an additional $10,000 as a result of the trial by the Circuit Judge.

To the extent of $10,000 the plaintiff was judged liable and required to make compensation *by trial and determination by the Circuit Judge of all the facts which would authorize a judgment for such sum.* In other words, as to all the facts which authorized a judgment for double the amount of the verdict, the case was tried and decided by the Circuit Judge as the tribunal provided by the statute to determine those facts.

In this manner the statute is interpreted by the trial judge to authorize a trial by the jury for the purpose of a verdict to determine the actual damages suffered by the plaintiff in the suit, including damages to be allowed for aggravation, and a trial by the Circuit Judge to find and determine the facts which will authorize the award of an additional sum equal to the amount awarded by the verdict of the jury.

The verdict of the jury will stand upon the finding of the jury, and judgment will be rendered for that amount, although the Circuit Judge should not be satisfied that the defendant was liable for the damages complained of, and should not be satisfied that the damages

were proved to the amount of the verdict, because, for the purpose of the verdict the jury are the judges of the facts, while for the purpose of doubling the verdict and determining the amount of the judgment, the Circuit Judge is the judge of the facts.

This proceeding does not preserve to the defendant in the suit the right of trial by jury to the extent of one-half of the amount of the judgment.

The judgment as rendered rests upon the trial and determination of the facts by the Circuit Judge.

The right of trial by jury has thus remained to the extent only of one-half the judgment.

It is to be observed that the statute is not framed to authorize, and is not interpreted by the Circuit Judge to authorize rendering judgment for double the amount of the verdict—the verdict being made the sole basis of the judgment.

Neither is the statute interpreted by the Circuit Judge to authorize the jury to determine by their verdict the sum which is double the amount of the damages proved. On the contrary, the jury are not permitted to do that. (See charge of the court, R. p. 202.)

The language of the statute as to the rendition of the judgment is that, "if it shall appear to the satisfaction *of the court* by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, *the court* shall render judgment against such defendant for double the amount of damages proved."

The jury do not render a judgment. They render a verdict, and rendering a judgment is an entirely different and subsequent act in which the jury have no part, and the judgment is rendered *by the court.*

It is *the court*, understood in this sense, acting without the jury, which determines the amount which shall go into the judgment.

This is the interpretation given to the statute by the Circuit Judge by the decision and by the judgment of the court. (R. pp. 215, 219.)

In deciding against the protest of the defendant in the case against doubling the damages, (R. p. 213,) the Circuit Judge uses the following language (R. p. 215):

"My attention is now called by counsel for the defendant to a later clause in the statute which very decidedly modifies the former one: 'If it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of, under the provisions of this act, the court shall render judgment against such defendant in double the amount of damages recovered.' I think, as contended by defendant's counsel, the words should be taken as they actually imply as provided by statute, and that it would therefore be left to the discretion of the judge of the court, whether a Justice of the Peace or a Circuit Judge, to determine whether, in view of the evidence, the damages as awarded by the jury in their verdict should be doubled. At any rate, I shall so treat it for the purposes of this motion."

Upon that decision judgment was rendered for double the amount. (R. p. 219.)

4th, The Supreme Court sustains this action of the Circuit Court.

The following is the language of the Supreme Court upon this subject (R. pp. 259, 260):

"It is contended that this act is unconstitutional, in that it confers upon the circuit judge power to act as chancellor in a suit at law so far as he exercises the authority to double the damages. The construction which defendant's counsel gives to the statute is that, before the court shall double the damages, it must appear satisfactorily to the court that the defendant is justly liable for the damages complained of, and that the judge is, by

the terms of the statute, to act independently of the jury in determining the amount of damages proved. The statute has been enforced in a number of cases. Swift v. Applebone, 23 Mich., 252; Elliot v. Herz, 29 Mich., 202; Monroe v. Rose, 38 Mich., 348; Trompen v. Verhage, 54 Mich., 305; 20 N. W., 53; Burnham v. Strother, 66 Mich., 519; 33 N. W., 410. The questions now suggested have not heretofore been raised by either the court or counsel. This fact does not, of course, conclude the defendant. The presumption is strong, however, that the statute, which has been operated under for nearly half a century, has on various occasions, when it has been enforced, been scrutinized by both court and counsel, and found not open to attack. The statute is inartificially drawn, but we think it open to the construction which is not inconsistent with the proper exercise of the distinct functions which the law casts upon the judge and jury respecttivly. The liability is declared to be in double the damages sustained. The presumption is that those damages are to be ascertained as in ordinary cases,—if the trial be before a jury, by the jury; and by the court when the jury is dispensed with. While the latter portion of the section is more appropriate to a trial before the court without a jury, we think the word "court" may be construed to mean the court acting through all of its instrumentalities, which includes the jury, and, so construed, the act is operative. It is competent for the legislature to provide for doubling damages in this class of cases. Trompen v. Verhage, 54 Mich., 304, 20 N. W., 53; Cummings v. Riley, 52 N. H., 368; Chickering v. Lord (N. H.,) 32 Atl., 773; Fitzgerald v. Dobson, 78 Me., 559, 7 Alt., 704; Barrett v. Railroad Co., 3 Allen, 101."

The cases cited by the court go to the question of the validity of the provision of the statute which *creates the liability for double* the amount of damages suffered.

Upon that point no question is made. Such a pro-

vision is valid, and there is no occasion for its discussion.

Minneopolis R. R. Co. v. Beckwith, 129 U. S., 26.
Missouri Pacific R. R. Co. v. Hume, 115 U. S., 512, 520.

The point in controversy here is, that this statute authorizes the judgment for *double* the damages suffered only on condition that *the court shall determine the facts*, and as the statute reads, and as it is interpreted and applied, the Circuit Judge is held to be *the court* for that purpose.

The further decision of the Supreme Court, determining that $10,000 be remitted from the judgment, does not remedy the action of the Circuit Judge in doubling the damages.

The Supreme Court determines that the *verdict of the jury*, of $10,000, was excessive, and remedies the action of the jury by reducing the judgment to the amount that it ought to be after doubling a proper verdict, and to accomplish that, directs $10,000 to be remitted from the judgment of $20,000.

In this manner the verdict is reduced to $5,000, and the action of the Circuit Judge in doubling that verdict is sustained.

The wrong of the action of the Circuit Judge in acting upon his own determination of the facts, and based thereon, exercising his power to double the damages proved, remains. To the extent of $5,000, the final judgment rendered, of $10,000 is based upon the determination of facts by the Circuit Judge.

5th, Upon the question whether the statute authorizes the action of the Circuit Judge, this court will accept the interpretation put upon the statute by the Supreme Court of the State.

Tullis v. Lake Erie & Western R. R. Co., 175 U. S., 348, 353.
Aberdeen Bank, v. Chehalis Co., 166 U. S., 440, 444

6th, Upon the question whether by that interpre-

tation, and the action of the court under it, the plaintiff in error is deprived of the protection of due process of law, the decision of this court is independent of the adjudication of the state court.

Scott v. McNeal, 154 U. S. 34 at 45.
Mobile & Ohio R. R. Co., v. Tennessee, 153 U. S., 486 at 492, 495.

7th, If by the action of the state court under its interpretation of the statute, the plaintiff in error is deprived of his property without due process of law, this court has jurisdiction to protect his rights by reversing the judgment of the state court, whether the statute might or might not have been otherwise properly construed and applied.

The prohibition of the Fourteenth Amendment, upon the subject of due process of law, extends to the action of the courts of the state as well as to legislative acts.

Chicago, Burlington &c. R. R. Co. v. Chicago, 166 U. S., 226 at 232.
Scott v. McNeal, 154 U. S., 34 at 45.

This court holds (Hurtado v. California, 110 U. S., 516, 535, 536,) that due process of law in the Fourteenth Amendment refers to that which is due process of law under the laws of the state—that each state may determine for itself what shall be due process of law within the state, and therefore due process of law may be different in different states.

While due process of law must in all cases include those provisions for the protection of personal rights which are prescribed by the principles of the common law, in addition to those provisions a state may make other and additional requirements for the protection of such rights, and by such additions create the due process of law by which persons are to be governed within the state.

Since it is to due process of law thus constituted

within each state to which the Fourteenth Amendment refers, it necessarily follows that under that amendment the Federal Court has jurisdiction to determine whether under the proceedings of the courts of any state, a person has been deprived of life, liberty or property without due process of law of that state.

It is not contended that this gives to the Federal Court a general jurisdiction to review the decisions of the state court in construing the statutes or constitution of the state. It is contended that the Federal Court has jurisdiction, when the question is properly presented, to inquire and determine what constitutes due process of law within the state, and determine whether by the proceedings of the state court the complaining person has been deprived of life, liberty and property without due process of law of that state.

Hodgson v. Vermont, 168 U. S., 262 at 272, 273.

III.

The claim which constitutes the Federal question which is presented to this court is sufficiently set up in the state Supreme Court.

It is held to be sufficient that the claim is made in the assignments of error to the state court.

Chicago, Burlington &c. R. R. Co. v. Chicago, 166 U. S. 226 at 271.

A motion was made to set aside the verdict and for a new trial in the Circuit Court.

The 17th ground for the motion is as follows (R. p. 223):

"17th. Section 2119, U. S. is unconstitutional for the following reasons, to wit:

"It is so written as to attempt to authorize a Circuit Judge privately to have it appear to his satisfaction that the defendant is justly liable for the damages

complained of under the provisions of Act No. 161 of 1850, and thereupon render judgment against the defendant for double the amount of damages proved, without regard to the action of any jury, and without any trial by jury as to reason for doubling any amount of damages. All in violation of the Constitution of Michigan, Article 6, Sections 1, 8, 12, 27, 32, and in violation of constitutional rights of citizens to have public trial in civil cases in courts of record."

The 78th assignment of error to the Supreme Court (R. p. 238,) is that the Circuit Court erred in its decision refusing the motion for a new trial on behalf of the defendant, notwithstanding all the reasons alleged on behalf of the defendant in support of such motion.

The same claim is made in the 93d assignment of error(R. p. 240,) which was made in the motion for new trial above stated.

The 94th assignment of error (R. p. 230,) claims that the state statute is inconsistent "with two provisions in the Constitution of the United States, especially the words of amendment 5, as to due process of law, and of amendment 7, assuring right of trial by jury."

The 95th assignment of error (R. p. 240,) claims that the statute is inconsistent with Article 5 of the amendments to the Constitution of the United States, requiring that no person shall be deprived of life, liberty or property without due process of law.

The 96th assignment of error (R. p. 240,) claims that said statute, "on which the judgment aforesaid depends, is inconsistent with Article 7 of the amendment to the Constitution of the United States, requiring that the right of trial by jury shall be preserved."

The 98th assignment of error (R. p. 240), makes the claim that by the record and proceedings the Circuit Court gave judgment against the law of the land.

While the Fourteenth Amendment of the Constitution of the United States is not specifically designated, it does sufficiently appear by the assignments of error that the plaintiff in error intended to set up the claim that under the statute and by the action of the court, he was deprived of his property without due process of law, contrary to the provisions of the Constitution of the United States.

To maintain the jurisdiction of this court it is only necessary that it should appear from the record, by the assignments of error in the state court that the claim was set up that by the proceedings complained of he is deprived of property without due process of law contrary to the provisions of the Constitution of the United States, in such terms as will inform the court that such claim is made.

While reference is made in the assignments of error to the 5th and 7th amendments, it is clear that it was the intention of the assignments of error to assert the protection which is given to him by due process of law under such provisions of the Constitution of the United States as provide for such protection. No set form of words is required to be used in making the claim in order to give this court jurisdiction to consider the claim.

California Bank v. Kennedy, 167 U. S., 362, at 365, 366.
Chapman v. Goodnow, 123 U. S., 540, at 548.
Capitol Bank v. Cadiz Bank, 172 U. S., 426 at 430.
The Victory, 6 Wall, 382 at 384.
Bridge Proprietors v. Hoboken Co., 1 Wall, 116 at 142.
Furman v. Nichol, 8 Wall, 44 at 56.
Roby v. Colehour, 146 U. S., 153 at 159, 160.

The action in the state court was a decision adverse to this claim, as the judgment of the court which was rendered in the case could not have been given without deciding it.

Harrison v. Morton, 171 U. S., 38 at 47.
Pierce v. Somerset Railway, 171 U. S., 641.
Chapman vs. Goodnow, 123 U. S., 540 at 548.
Furman v. Nichol, 8 Wall, 44 at 56.
Roby v. Colehour, 146 U. S., 153 at 159, 160.

With all due respect to counsel on the other side, an inspection of his brief upon the motion to dismiss the writ of error in this case, shows that he has misunderstood the decisions of this court as to where and how a Federal question may be raised. There is no pretence that the pleadings,—the declaration and plea filed in this case in the trial court, raise the Federal question. In the motion for a new trial, in the Circuit Court for the county of Kalamazoo, and in the assignments of error to the Supreme Court of the State of Michigan, which is the court of last resort in that state, the Federal question as we have herein before specifically and positively shown was raised.

An inspection of the cases cited by counsel in his brief, upon the subject of Federal Question, will show that, in every instance, the facts and conditions were different than they are here, and that only by inference was the claim which constitutes the Federal question set up in those cases in the court of last resort in their respective states. While in this case, as we have conclusively shown, the claim was set up and the court cited to the assignments of error specifically.

We think this an extreme case, a case where a man has been unduly and unjustly held up and made to deliver a sum of money far beyond any injury sustained by the defendant in error, and been deprived of property without due process of law, and that that question was duly raised in time, was argued and submitted to the state court, the rights of the plaintiff in error there denied upon that proposition, and that the question is fairly and properly here.

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